IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7902 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BIJAL VINOD MODY

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

1. Special Civil Application No. 7902 of 1988

Mr.Manish Upadhyay for

MR PRANAV G DESAI for Petitioner No. 1

Ms. Monali Bhatt for

MR AD OZA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/08/2002

ORAL JUDGEMENT

1. It is unfortunate that a petition of 1998 was notified after 14 years for final hearing and this Court has to examine in respect of the relief granted earlier at the time of issuing rule in favour of the petitioner, which was subject to the result of the main petition. Accordingly keeping this in my mind and considering the submissions made before me, I am of the view that this petition is required to be disposed of in favour of the petitioner, in view of the fact that the interim relief was granted in favour of the petitioner in the year 1988 and the petitioner was permitted to appear in the 12th Standard Examination, which was held in the month of March 1989 by the Gujarat Secondary Education Board and as found from the marksheet tendered by Mr.Upadhyay, who appeared for the petitioner, the petitioner had appeared in the 12th Standard Examination conducted by the Gujarat Secondary Education Board, Gandhinagar in the month of March 1989 under Seat No.G100910 in General Stream and the petitioner had cleared said 12th Standard Examination by obtaining Grade Two. After clearing the said examination, the petitioner has further prosecuted his studies with the Gujarat University in Commerce Faculty and the petitioner had also successfully cleared Third B.Com. Degree Examination conducted by the Gujarat University under Seat No.2965 held in May 1992. The xerox copy of the marksheet and the Certificate are also produced to show that the petitioner has also cleared Third B.Com. Degree Examination from the Gujarat University.

2. Considering these backgrounds and on examining the petition, it is the case of the petitioner that petitioner was prosecuting his studies and he has cleared new S.S.C. Examination and accordingly it is the case of the petitioner that he is entitled to appear in the 12th Standard Examination conducted by the Gujarat Secondary Education Board, which is to be held in the month of April 1989 and accordingly as a private student he approached the Higher Secondary Education Board with a prescribed form, which was submitted through Narsinh Vidya Mandir, Junagadh and while submitting the Application form, the petitioner has already furnished all the necessary particulars with information in prescribed form. The petitioner has also submitted the said application before the last date for submitting application to the School. Annexure 'A' is the copy of the Application submitted by the petitioner to the Gujarat Secondary Education Board, Gandhinagar. It is the case of the petitioner that while submitting Application, the petitioner has furnished all details as

per the guidelines of the Board in respect of the candidate who has to appear in the examination as a private candidate. Clause 4 deals with the requirements of the candidate while seeking such permission to appear as a private candidate. It is the case of the petitioner that the petitioner is fulfilling all the conditions as per the guidelines of the Board as provided in Clause 4. Clause 4 reads as under:-

"4.(a) In accordance with the following terms and in support of the application necessary certificates/documents etc. to be produced by the private candidates, permission would be granted to appear in the examination:

(1) The candidate should have completed two years after having passed new S.S.C. or the equivalent examination.

(2) Age of the candidate should be 18 years on 1st April/1st November.

(3) Ordinarily, the examinee should have completed the period of years generally required for appearing in the S.S.C. examination after regularly studying every year, after leaving the last school. Bar of 18 years of age will not be made applicable in respect of the blind students. Ordinarily the candidate should have passed a period of two years in the month and year in which he has passed the S.S.C. examination."

3. After application was submitted, seeking permission to appear as a private candidate, the petitioner has received the letter from the Board dated 11.10.88 and as per the said letter, the petitioner was informed that as the petitioner has not completed the age of 18 years, he is ineligible to appear and the documents submitted by the petitioner alongwith the application were returned to the petitioner. It is this communication which is challenged by filing this petition and the petitioner has also by way of interim relief prayed that the petitioner be permitted to appear in the Examination of Higher Secondary Certificate (12th Standard), which was to be held in March/April 1989. The petitioner has also annexed the letter dated 17.10.88 issued by the Principal of Narsinh Vidya Mandir,Junagadh addressed to the Examination Secretary of Gujarat Secondary Education Board, Gandhinagar and as found from the said letter, the Principal has informed the Board while mentioning Board's guideline No.4(2) that on 4.3.89

i.e. before April 1, 1989, the petitioner completes the age of 18 years and accordingly request was made to grant permission to the candidate for appearing in the Examination. The birth date of the petitioner, as per School Leaving Certificate dated 18.8.88, is 4.3.71 and in column No.10 the petitioner was shown as Studying in Standard X.

4. When the petitioner has approached this court as per order dated 29.11.88,court has issued notice, which was made returnable on 9.12.88 by permitting direct service and on 16.12.88 the court has passed the following order:-

"Amendment is granted. Rule. Mr. Shelat is present on behalf of the respondent.He cannot have any valid objection for grant of the prayer in terms of para 15(CC). There will be interim relief in terms of para 15(CC). We make it clear that this interim relief is subject to the result of the main Spl.Civil Application.

16.12.88 (P.R.Gokulakrishnan,CJ)

(R.J.Shah,J)"

Accordingly the petitioner was permitted to appear in 12th Standard Examination, which was conducted by the Board in the month of March 1989 and the petitioner has successfully cleared the said examination with Grade Two and as the petitioner has cleared 12th Standard Examination, he has prosecuted further studies with Gujarat University in Commerce Faculty and the petitioner has also successfully cleared the Third B.Com.Degree Examination, which was held in the month of May 1992 with Second Class.

5. I am not examining the contentions raised in this petition and the contentions about the legality of the order passed by the Board vide letter dated 11.10.88 that the petitioner is not fulfilling the requirements as per the details furnished by the petitioner and he is not eligible to appear in the examination on account of not completing the age of 18 years. As found, after clearing 12th Standard Examination held by the Gujarat Secondary Education Board, the petitioner has cleared Degree in Commerce Faculty in the month of May 1992 and the petitioner is settled in his life. When the petitioner has already appeared and cleared 12th Standard Examination and the rejection of the Application was only on the ground that the petitioner has not completed the

age of 18 years, this Court is of the view that such rejection was not valid. As per the marksheet issued by the respondent Board, it shows that the petitioner has cleared 12th Standard Examination and accordingly it is held that the petitioner was eligible to appear in the 12th Standard Examination and accordingly the decision taken by the Board vide letter dated 11.10.88 (Annexure 'B") is set aside. Petition is allowed and rule is made absolute accordingly with no order as to costs.

Xerox copies of the above referred two marksheets tendered by the petitioner are taken on record.

(D.K.Trivedi,J)

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